IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

&

THE HONOURABLE MR. JUSTICE GOPINATH P.

THURSDAY, THE 05TH DAY OF NOVEMBER 2020 / 14TH KARTHIKA, 1942

WA.No.1366 OF 2020

AGAINST THE JUDGMENT IN WP(C) 33316/2019(L) OF HIGH COURT OF KERALA DATED 18/5/2020

APPELLANTS/RESPONDENTS 12 TO 14:

1 **MATHAI VANIYATH**
AGED 68 YEARS
S/O POULOSE, VANIYATH HOUSE, MULANTHURUTHY P.O, ANDETHUMUGAL , KARICODE, PIN- 682 314.

2 **K.T.CHACKOCHAN**
AGED 70 YEARS
S/O THOMAS, KANNAPPILLI HOUSE, MULANTHURUTHY P.O, PIN- 682 314.

3 **VARGHESE THACHAMPURATH,**
AGED 64 YEARS
THACHAMPURATH HOUSE, KARICODE, MULANTHURUTHY P.O, PIN- 682 314.

BY ADVS.
SRI.SAJI VARGHESE KAKKATTUMATTATHIL
SRI.S.SHYAM

RESPONDENTS/PETITIONERS & RESPONDENTS 1 TO 11:

1 **MARTHOMAN CHURCH**
MULANTHURUTHY REPRESENTED BY ITS TRUSTEE, K.K. JIMMY THARAKAN, S/O KORA , AGED 67 YEARS, KALLARAKKAL , MULANTHURUTHY P.O, PIN- 682 314.

2 **SHAJAN JACOB,**
AGED 62 YEARS
S/O JACOB, PALLIPPURAM HOUSE, MULANTHURUTHY P.O, PIN- 682 314.

3 **EBIN MATHAI,**
AGED 57 YEARS
S/O IYPE MATHEW, PONODATH HOUSE, AMBALLOOR P.O, PIN- 682 315.

4 **FR. GEO GEORGE,**
AGED 50 YEARS
S/O GEORGE, VICAR, MARTHOMAN CHURCH,MULANTHURUTHY P.O, PIN- 682 314.

5 **FR. DAVID THANKACHAN,**
AGED 36 YEARS
S/O THANKACHAN, ASSISTANT VICAR, MARTHOMAN CHURCH, MULANTHURUTHY P.O, PIN- 682 314.

6 **FR. THOMAS K ELIAS,**
AGED 44 YEARS
S/O ELIAS, ASSISTANT VICAR, MARTHOMAN CHURCH, MULANTHURUTHY P.O, PIN- 682 314.

7 **FR. ALEX P GEORGE,**
AGED 38 YEARS
S/O GEORGE,ASSISTANT VICAR, MARTHOMAN CHURCH, MULANTHURUTHY P.O, PIN- 682 314.

8 **STATE OF KERALA,**
REPRESENTED BY ITS CHIEF SECRETARY ,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.

9 **THE DISTRICT COLLECTOR,**
ERNAKULAM ,
CIVIL STATION , ERNAKULAM - 682 030.

10 **THE DIRECTOR GENERAL OF POLICE,**
POLICE HEAD QUARTERS ,
THIRUVANANTHAPURAM - 695 001.

**11 THE DISTRICT POLICE CHIEF,
ERNAKULAM RURAL, ALUVA- 683 101.**

**12 THE DEPUTY SUPERINTENDENT OF POLICE,
MUVATTUPUZHA, PIN- 686 661.**

**13 THE STATION HOUSE OFFICER,
MULANTHURUTHY, P.O, PIN- 682 314.**

**14 JOSEPH MAR GREGARIOUS,
METROPOLITAN TRUSTEE, KYAMTA SEMINARY,
THIRUVANKULAM P.O, PIN- 682 305.**

**15 FR. SHAJI MAMOOTTIL
MAMOOTTIL HOUSE, PERUMPILLY P.O,
MULANTHURUTHY , PIN- 682 314.**

**16 FR. BABY CHAMAKKALA,
CHAMAKKALAYIL HOUSE, MULANTHURUTHY
P.O,MULANTHURUTHY , PIN- 682 314.**

**17 FR. SHAMMI JOHN,
ERAMANGALATH HOUSE, VETTICAL P.O,
MULANTHURUTHY , PIN- 682 314.**

**18 FR. VARGHESE PULAYATH,
PULAYATH HOUSE, PERUMPILLY P.O,
MULANTHURUTHY , PIN- 682 314.**

**R1-7 BY ADV.SR.S.SREEKUMAR (SR)
SRI.K.V.SOHAN, STATE ATTORNEY
R14-18 BY ADV. SRI.C.K.KARUNAKARAN**

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 02-11-2020, ALONG WITH WA.1411/2020, THE COURT ON 05-11-2020 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

&

THE HONOURABLE MR. JUSTICE GOPINATH P.

THURSDAY, THE 05TH DAY OF NOVEMBER 2020 / 14TH KARTHIKA, 1942

WA.No.1411 OF 2020

AGAINST THE JUDGMENT IN WP(C) 33316/2019(L) OF HIGH COURT OF KERALA DATED 18/5/2020

APPELLANT/THIRD PARTY:

SANTHOSH MATHAI
AGED 49 YEARS
S/O. LATE T.P. MATHAI VANMELIL, THAZHAMANA HOUSE, MULANTHURUTHY-682314.

BY ADVS.
SRI.MATHEWS J.NEDUMPARA
SRI.P.BIJIMON
SHRI. ABDUL JABBARUDEEN.M
SMT. MARIA NEDUMPARA

RESPONDENTS/PETITIONERS & RESPONDENTS:

1 **MARTHOMAN CHURCH,**
MULANTHURUTHY, REPRESENTED BY ITS TRUSTEE K.K. JIMMY THARAKAN,
MULANTHURUTHY P.O., PIN -682314.

2 **SRI. SHAJAN JACOB,**
S/O. JACOB MATHEW, AGED 61 YEARS,
PALLIPPURAM HOUSE, MULANTHURUTHY P.O., PIN-682314.

3 **SRI. EBIN MATHAI,**
S/O. IYPE MATHEW, AGED 56 YEARS, PONODATH HOUSE, MARTHOMAN CHURCH, MULANTHURUTHY P.O., PIN-682314.

4 **FR. GEO GEORGE,**
S/O. GEORGE, AGED 49 YEARS, VICAR, MARTHOMAN CHURCH, MULANTHURUTHY P.O., PIN-682314.

5 **FR. DAVID THANKACHAN,**
S/O. THANKACHAN, AGED 37 YEARS, ASSISTANT VICAR, MARTHOMAN CHURCH, MULANTHURUTHY P.O., PIN-682314.

6 **FR. THOMAS K. ELIAS,**
AGED 43 YEARS, S/O. ELIAS, ASSISTANT VICAR, MARTHOMAN CHURCH, MULANTHURUTHY P.O., PIN-682314.

7 **FR. ALEX P. GEROGE,**
S/O. GEORGE, AGED 37 YEARS, ASSISTANT VICAR, MARTHOMAN CHURCH,
MULANTHURUTHY P.O., PIN-682314.

8 **THE STATE OF KERALA,**
REPRESENTED BY ITS CHIEF SECRETARY, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695001.

9 **THE DISTRICT COLLECTOR,**
ERNAKULAM, CIVIL STATION, KAKKANADU,
ERNAKULAM-682030.

10 **THE DIRECTOR GENERAL OF POLICE,**
POLICE HEAD QUARTERS,
THIRUVANANTHAPURAM-695001.

11 **THE DISTRICT POLICE CHIEF,**
ERNAKULAM RURAL, ALUVA-683101.

12 **THE DEPUTY SUPERINTENDENT OF POLICE,**
MUVATTUPUZHA, PIN-686661.

**13 THE STATION HOUSE OFFICER,
MULANTHURUTHY POLICE STATION, MULANTHURUTHY,
PIN-682314.**

**14 JOSEPH MAR GREGORIOUS,
METROPOLITAN TRUSTEE, KYAMTA SEMINAR,
THIRUVANKULAM P.O., PIN-682305.**

**15 FR. SHAJI MAMOOTTIL,
MAMOOTTIL HOUSE, PERUMPILLY P.O.,
MULANTHURUTHY-682314.**

**16 FR. BABY CHAMAKKALA,
CHAMAKKALA HOUSE, MULANTHURUTHY P.O.,
MULANTHURUTHY-682314.**

**17 FR, SHAMMI JOHN,
ERAMANGALATH HOUSE, VETTICAL P.O.,
MULANTHURUTHY-682314.**

**18 FR. VARGHESE PULAYATH,
PERUMPILLY P.O., MULANTHURUTHY, PIN-682314.**

**19 MATHAI VANIYATH,
VANIYATH HOUSE, ANDETHUMUGAL, KARICODE,
MULANTHURUTHY P.O., PIN-682314.**

**20 K.T. CHACKOCHAN,
KANNAPILLI HOUSE, MULANTHURUTHY P.O.,
MULANTHURUTHY-682314.**

**21 VARGHESE THACHAMPURATH,
THACHAMPURATH HOUSE, KARICODE,
MULANTHURUTHY P.O., MULANTHURUTHY-682314.**

**BY ADV. SRI.P.VISWANATHAN (SR)
R1 TO R7 SRI.S.SREEKUMAR (SR)
SRI.K.V.SOHAN, STATE ATTORNEY**

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 02-11-2020, ALONG WITH WA.1366/2020, THE COURT ON 05-11-2020 DELIVERED THE FOLLOWING:

J U D G M E N T

Dated this the 5th day of November, 2020

Shaffique, J.

These appeals are filed challenging judgment dated 18/5/2020 in WP(C) No. 33316/2019. Respondents 12 to 14 had filed WA No. 1366/2020 and a third party had filed WA No. 1411/2020 after seeking leave of Court.

2. The petitioners in WP(C) No. 33316/2019 had approached this Court seeking for police protection in order to enforce the direction issued by the District Court, Ernakulam in its order dated 25/10/2019 in IA No.624/2007 in OS No.1/1124 M.E. In the said order, it was held at paragraphs 12 to 14 as under

> *"12. The administration of this Malankara church has to be under its 1934 Constitution and it would be totally unjust to relegate the parties to a fresh suit for the same. As held by the Hon'ble High Court, though the prayer in the petition is for amendment of the decree, in essence, it is for amendment of the scheme, which this court, in the light of the authoritative pronouncement of the Apex Court and in exercise of its inherent powers, is bound to allow. Since the request, in essence and effect, is for amendment of the scheme in consideration of subsequent relevant events, the argument*

regarding merger of this courts decree with that of the Hon'ble High Court in A.S 304/1960 is also to be repelled.

13. Further, the Apex Court as latest as Fr. Issac Mattammel Cor- Episcopa v. St. Mary's Orthodox Syrian Church (2019 (4) KLT 1 (SC) held that the decision in K.S Varaghese çase (2017 (3) KLT 261 SC) filed in a representative capacity is binding on all courts and all pending matters should be disposed of in tune with the same. The Apex Court also restrained all civil courts from passing any order in violation of the mandate in K.S Varghese case (AIR 1995 2001 SC). The 1934 Constitution should be applied to this Malankara church and for that the scheme should be amended/substituted.

14. The petition is allowed and the scheme which is appended to the final decree is ordered to be substituted by the 1934 constitution of Malankara sabha exhibited as A12 which shall govern the administration and management of Marthoman Church, Mulamthuruthy in future."

Pursuant to the said order, attempts were made by the writ petitioners to take over the management and administration of the church and its properties. According to the petitioners, respondents 7 to 14 and their men were sitting inside the church locking the gate and petitioners were physically prevented from enjoying the benefits of the aforesaid order. Learned Single Judge after considering the respective contentions allowed the writ petition and granted police protection. Paragraph 14 of the judgment reads as under:-

> *"14. In the result, this Court has to grant police protection to the petitioners as prayed. The police shall give effective protection to the petitioners to conduct religious service in Mulanthuruthy Marthoma Church as against any obstruction being caused by party respondents and others. The police shall ensure that no persons other than the petitioners are allowed to conduct religious services in the Church. The police shall ensure that the affairs of the church managed by the petitioners are not obstructed by the respondents. If any force is required to take over management and entrust the same to the petitioners, it shall also be done by the police. However, it is made clear that all parishioners are free to attend the services of the Church and the petitioners shall not deny them any religious services. The police shall take necessary measures as above until peace is achieved.*

3. The contention urged by the appellants in WA No.1366/2020 is that when in the order dated 25/10/2019 in IA No.624/2007 of the District Court, Ernakulam, it was specifically stated that the 1934 Constitution of Malankara Sabha shall govern the administration and management of Marthoman Church, Mulanthuruthy in future, in the absence of a decision by the trustees to entrust the management of the church to a person of their choice, the decision taken by the Metropolitan in its kalpana dated 17/5/2019 is not binding. It is submitted that

pursuant to the direction issued by the Court on 25/10/2019, a fresh decision ought to be taken, failing which, the petitioners had no right to seek police protection. That apart, it is contended that, for identical reliefs, a separate petition was filed by the writ petitioners before the Apex Court and since no orders were passed, it is not open for them to challenge it.

4. In WA No. 1411/2020, the contention urged by the 3rd party appellant is that since review petition has been filed before the District Court, Ernakulam against the order dated 25/10/2019 in IA No.624/2007 in OS No.1/1124 M.E., no further directions should be issued by this Court. The learned Single Judge had passed an order to grant police protection when there was no such order. But the situation has changed and when a review petition is pending, the writ court does not have jurisdiction to issue any mandamus. That apart, it is contended that the scheme could not have been changed based on the judgment of the Apex Court in ***K.S.Varghese v. St.Peter's & St.Paul's Syrian Orthodox Church*** [(2017) 15 SCC 333]. A subsequent judgment cannot be relied upon to unsettle a scheme which was decided much earlier. It is also argued that the judgment in

K.S.Varghese (supra) cannot bind the Mulanthurthy church or the rights of parishioners who belongs to the patriarch faction in any manner. It is also argued that majority of the parishioners belong to patriarch faction which cannot be lost sight while resolving the aforesaid issues. It is also argued that when the civil Court decree can be enforced by the Civil Court itself, this Court should not have invoked the power under Art.226 of the Constitution of India to grant police aid.

5. Learned senior counsel Sri.S.Sreekumar appearing on behalf of the writ petitioners would submit that the appellants in WA No. 1366/2020 had challenged the judgment dated 18/5/2020 in WP(C) No. 33316/2019 before the Apex Court. The said Special Leave Petition was dismissed by order dated 29/9/2020, which reads as under:-

> *"SLP(C) No.11212/2020*
> *Heard learned counsel for the parties.*
> *We do not find any ground to entertain this special leave petition. The special leave petition is dismissed.*
> *However, we observe that O.P.(Civil) No.57469/19 and the regular appeal filed against the order dated 25.10.2019 of First Additional District Judge should be decided on its own merits. We also note that the petitioners' case is that their case is not covered by K.S. Varghese vs. Saint Peters and*

Saint Paul's Syrian Orthodox Church (2017) 15 SCC 333 whereas the learned counsel for the respondents submits that this case is fully covered by the judgment of this Court in K.S. Varghese (supra).

Pending application(s), if any, stands disposed of.

SLP(C) No.11562/2020

The special leave petition is dismissed.

Pending application(s), if any, stands disposed of."

It is also argued that the appellant in WA No. 1411/2020 along with another person had filed WP(C) No. 1225/2020 before the Apex Court and one of the reliefs prayed for was to declare that the judgment dated 18/5/2020 in WP(C) No. 33316/2019 is to be rendered void ab initio and the said writ petition was not entertained by the Apex Court and was dismissed as per order dated 28/10/2020, which reads as under:

"We have heard learned counsel for the petitioners.

We are of the view that the prayers made in this writ petition filed under Article 32 of the Constitution cannot be entertained. This writ petition is only misconceived and is, thus, dismissed.

Pending application stands disposed of."

In fact, pursuant to the directions issued by the learned Single Judge, Contempt Case (c) No.777/2020 was filed by the writ petitioners and certain orders were passed. The officers of the State preferred an appeal as WA No. 1046/2020 and a review

petition also was filed by a few of the parishioners as RP No.705/2020 seeking review of order dated 12/8/2020 issued by this Court. By a separate judgment dated 16/10/2020, we have issued certain directions in the writ appeal and the review petition was dismissed. The following were the directions issued:-

> *" 14. As far as the writ appeal is concerned, the District Collector is in possession of the key of the church and he is in control of the premises as well. In the light of the direction issued by the learned Single Judge in its order dated 29/7/2020, the District Collector shall hand over key of the church to the complainants in the contempt case within a period of 2 weeks from the date of receipt of a copy of this judgment, which, of course, will be subject to any orders that may be passed in the regular appeal filed against order dated 25/10/2019 or in OP(Civil) No. 57469/2019 or even in the review petition filed as RP No.6/2020 against the order dated 25/10/2019 in IA No. 624/2007 in OS No.1/1124(ME).*
>
> *15. As already directed by the learned Single Judge, police shall render necessary police protection to ensure that no law and order situation or obstruction is being created by the patriarch faction during the transition period or subsequent thereto. It shall be open for the petitioners to seek further orders from the learned Single Judge, if necessary."*

6. As far as the appellants in WA No. 1366/2020 are concerned, they have straight away preferred an appeal before

the Apex Court and the same had already been dismissed as early as on 29/9/2020. The contention urged by the learned counsel for appellants is that insofar as the appeal was not dismissed on merits, there is no merger and a separate appeal is maintainable before this Court. Of course, dismissal of the Special Leave Petition by itself is not a ground to reject an appeal. But still, this is a case in which the learned Single Judge had issued an order of police protection taking into account the law and order situation that has emanated when attempts were made by the writ petitioners to takeover the management of the church and its properties. It is contended by the learned counsel for appellants that Ext.P7 does not confer any right and petitioners have no right to obstruct the management of the church and its properties by the orthodox faction. In fact, it is for the said faction to take a decision as to who should be the Vicar and who should manage the church and its properties. The appellants have no semblance of right to defeat a valid claim by obstructing the petitioners in administering the church and its properties in accordance with law. Therefore, there is no merit in the contention urged by the counsel for appellants in WA No.

1366/2020.

7. As far as WA No. 1411/2020 is concerned, a third party has filed the appeal. The contention that he had preferred a review petition before the District Court by itself is not a ground to set aside the judgment in WP(C) No. 33316/2019. As long as the order dated 25/10/2019 in IA No.624/2007 in OS No.1/1124 M.E. is in force and is not stayed, there is justification on the part of the learned Single Judge to have issued the direction to grant police protection. The contention that the judgment in ***K.S.Varghese*** (supra) cannot be applied to the factual aspects involved in the order dated 25/10/2019 in IA No.624/2007 are all matters which we are not concerned at this stage of the proceedings. When directions have been issued by the Apex Court on different occasions relating to the management and administration of various churches, it is the duty of this Court to ensure that the litigants get the fruits of the litigation which has been pending for quite a long time. What we find is that unnecessary, frivolous and vexatious contentions are being urged in order to overcome the law laid down by the Apex Court.

8. In the result, we do not find any reason to interfere

with the judgment dated 18/5/2020 in WP(C) No. 33316/2019. Accordingly, these writ appeals are dismissed.

In our judgment dated 16/10/2020 in WA No.1046/2020, we have already directed the District Collector to hand over the key of the church and its premises to the writ petitioners, as reflected at paragraph 14 of the judgment, which we have already extracted above. District Collector shall forthwith hand over the keys as directed in the said judgment.

Sd/-

A.M.SHAFFIQUE

JUDGE

Sd/-

GOPINATH P.

JUDGE

Rp